

Proposed Amendments to Massachusetts Regulation 105 CMR 225.000: Nutrition Standards for Competitive Foods and Beverages in Public Schools

Lea Susan Ojamaa, Director, Division of Prevention & Wellness
Claire Santarelli, Manager of Wellness Initiatives

Presentation to the Public Health Council
August 13, 2014

Background

- The “Act Relative to School Nutrition,” signed into law on July 30, 2010, required the Massachusetts Department of Public Health (DPH) to establish standards for competitive foods and beverages sold or provided in public schools during the school day.
- DPH worked with the Massachusetts Department of Elementary and Secondary Education (DESE) and other key partners to develop the nutrition standards, which are based primarily on the Institute of Medicine’s *Nutrition Standards for Foods in Schools* and the *Dietary Guidelines for Americans, 2010*.

Background

- Regulations were passed by Public Health Council on July 13, 2011. Schools were to comply with the nutrition standards beginning on August 1, 2012, unless otherwise noted.
- Competitive foods and beverages are defined as any items sold or provided outside of USDA's National School Lunch and School Breakfast Programs.
- In Massachusetts, the standards apply only to those items sold in public schools in the following areas:
 - School cafeterias, including à la carte items
 - Vending machines
 - School stores and snack bars

Background

- The standards do not apply to foods and beverages sold as part of a federal nutrition program such as the School Breakfast Program, School Lunch Program, or the Child and Adult Care Food Program (all of which follow USDA national guidelines).
- The standards also do not apply to foods or beverages sold or provided at booster sales, concession stands, and other school-sponsored or school-related fundraisers and events.
- School districts have the discretion to go beyond these standards and establish local policies that apply to all settings and/or at all times to promote a healthy school environment throughout the entire day. For example, schools may determine if the standards apply to classroom lessons and parties.

Background

- Flavored milk garnered special attention
- MA regulation states that, by August 1, 2013, flavored milk and milk substitutes may contain no more sugar than that found in plain fat-free or low-fat milk
- In anticipation of the forthcoming federal guidance, a letter went out to superintendents May 2013 delaying implementation of this standard
- Effectively schools are currently implementing the first component, which is that flavored milk and milk-substitutes shall contain no more than 22 grams per 8oz serving

Need for Updates to Regulations

- In June 2013, USDA published the *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010 Interim Final Rule*.
- The regulations were effective in August 2013, with an implementation date of July 1, 2014.
- Massachusetts regulations align with USDA standards in many cases, but this new rule introduced standards that Massachusetts has not addressed.

Recommendations

- In many cases, there is alignment between MA regulations and USDA, but for several categories there are differences that must be addressed.
- Because Massachusetts does not meet the minimum standards in all categories, we have proposed revisions to those portions of the regulations to bring the Commonwealth into compliance with federal law.
- There are several areas where MA regulations exceed the federal minimum. MA must determine whether to align with USDA minimum standards, maintain the existing standard, or propose a new standard for each category.

Proposed Changes

- 5 areas where MA does not currently meet the minimum and must come into compliance
- 7 areas where current MA standard is more strict and DPH recommends maintaining current standard
- 4 areas where current MA standard is more strict and DPH recommends aligning with USDA

General Standard for Competitive Food

- USDA: See next slide
- MA: Current regulations do not include a general standard.

Proposal: Adopt USDA standard, with three exceptions (in red)

General Standard for Competitive Food

- To be allowable, a competitive food item must meet all proposed competitive food nutrient standards and
 - be a grain product that contains 50% or more whole grains by weight or have whole grains as the first ingredient; or
 - have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or
 - be a combination food that contains $\frac{1}{4}$ cup of fruit and/or vegetable; or
 - for the period through June 30, 2016, contain 10% of the Daily Value (DV) of a naturally occurring nutrient of public health concern (i.e., calcium, potassium, vitamin D or dietary fiber).
- ***If water is the first ingredient, the second ingredient must be one of the above.
- Exemptions:
 - Fresh, frozen and canned fruits and vegetables with no added ingredients except water or 100% juice
 - Canned and frozen fruit packed in extra light or light syrup
 - Canned vegetables that contain a small amount of sugar for processing purposes

National School Lunch/School Breakfast Program

- USDA: Entrée items sold as part of the National School Lunch Program/School Breakfast Program (NSLP/SBP) are exempt from competitive food standards.
- MA: No exemption for NSLP/SBP entrées.

Proposal: Maintain current MA standard.

Grain Items

- USDA: Must include 50% or more whole grains by weight or have whole grains as the first ingredient.
- MA: Must include 50% or more whole grains by weight or have whole grains as the first ingredient.

Proposal: Maintain current MA standard; standards are already the same.

Total Fats

- USDA: Must contain 35 percent or less of total calories from fat per item as packaged or served.
- Exemptions:
 - Reduced-fat cheese; part-skim mozzarella cheese
 - Nuts, seeds, nut/seed butters
 - Products consisting of only dried fruit with nuts and/or seeds with no added sweeteners or fat
 - Seafood with no added fat
 - These exemptions are not restricted by size
- MA: Must contain 35 percent or less of total calories from fat per item as packaged or served.
- Exemptions:
 - Reduced-fat cheese, 1 oz portion
 - Nuts, nut butters, seeds, 1 oz portion

Proposal: Adopt the additional USDA exemptions but maintain MA portion restriction (except for seafood).

Saturated Fats

- USDA: Must contain less than 10 percent of total calories from saturated fat per item as packaged or served.
- Exemptions:
 - Reduced-fat cheese; part-skim mozzarella cheese
 - Nuts, seeds, nut/seed butters
 - Products consisting of only dried fruit with nuts and/or seeds with no added sweeteners or fat
 - These exemptions are not restricted by size
- MA: Must contain less than 10 percent of total calories from saturated fat per item as packaged or served.
- Exemptions:
 - Reduced-fat cheese, 1 oz portion
 - Nuts, nut butters, seeds, 1 oz portion

Proposal: Adopt the additional USDA exemptions but maintain MA portion restriction.

Trans Fats

- USDA: Zero grams of trans fat per portion as packaged (≤ 0.5 g per portion)
- MA: All foods shall be trans-fat free.

Proposal: Standards are functionally the same; adopt USDA language for consistency.

Sugar

USDA

- Total sugar must be no more than 35 percent by **weight**.
- Exemptions:
 - Dried whole fruits or vegetables; dried fruit or vegetable pieces
 - Dried dehydrated fruits/vegetables with no added nutritive sweeteners, and
 - Dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes, i.e. cranberries, tart cherries, and blueberries.

MA

- No food shall contain more than 35 percent of its total **calories** from sugar.
- Exemptions:
 - 100% fruit with no added sugar
 - Non-fat or low-fat yogurt, including drinkable yogurt, which contains a maximum of 30 grams of sugars per 8 ounce packaged serving.

Proposal: Adopt USDA standard. Specify that only those dried fruits listed are exempt. Current MA exemption for yogurt no longer necessary.

Sodium

USDA

- Entrée items: no more than 480 mg of sodium per item as packaged or served, unless they meet the exemption for NSLP/SBP entrée items.
- Snacks: no more than 240 mg sodium per item as packaged or served; effective July 1, 2016, sodium standard will be no more than 200 mg sodium per item packaged or served.

MA

- Entrée items: no more than 480 mg of sodium per item as packaged or served.
- Snacks: no more than 200 mg sodium per item as packaged or served.

Proposal: Maintain current MA standard. Exemptions for NSLP/SBP entrée items not proposed; snack standards will be the same by 7/1/2016.

Calories

USDA

- Entrée items sold a la carte must contain no more than 350 calories, including accompaniments, unless they meet the exemption for NSLP/SBP entrée items.
- Snack items and side dishes served a la carte must have no more than 200 calories per item as packaged or served (including accompaniments).

MA

- Calories for entrée items shall not exceed that of comparable NSLP/SBP entrée item.
- Snack items and side dishes served a la carte must have no more than 200 calories per item as packaged or served.

Proposal: Adopt USDA standard of 350 calories and language around accompaniments, but do not allow exemption for NSLP/SBP entrée items.

Accompaniments

- USDA: Accompaniments must be included in the nutrient profile as part of the item served to determine if an item meets the nutrition standards for competitive food.
- MA: Do not currently address accompaniments.

Proposal: Adopt USDA standard.

Caffeine

- USDA: Foods and beverages available in elementary and middle schools must be caffeine free, with the exception of trace amounts of naturally occurring caffeine substances. Caffeinated foods and beverages are permitted to be sold in high schools.
- MA: No food or beverage sold in elementary, middle or high schools shall contain more than trace amounts of caffeine.

Proposal: Maintain MA standard.

Beverages - USDA

- Plain water (carbonated or uncarbonated) (no size limit)
- Low-fat milk, plain ($\leq 8\text{oz}$ elementary, $\leq 12\text{oz}$ middle/high)
- Non-fat milk, plain or flavored ($\leq 8\text{oz}$ elementary, $\leq 12\text{oz}$ middle/high), including nutritionally equivalent milk alternatives as permitted by the school meal requirements
- 100% fruit or vegetable juices ($\leq 8\text{oz}$ elementary, $< 12\text{oz}$ middle/high)
- 100% fruit and vegetable juice diluted with water or carbonated water ($\leq 8\text{oz}$ elementary, $\leq 12\text{oz}$ middle/high)
- Additional allowed beverages for high school only:
 - Other beverages that are labeled to contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces (no more than 20 fluid ounces); and
 - Other beverages that are labeled to contain no more than 40 calories per 8 fluid ounces or 60 calories per 12 fluid ounces (no more than 12 fluid ounces).

Beverages - MA

Same type and portion across all grades:

- Plain water, +/- natural flavorings, +/- carbonation (no size limit)
- Low-fat (1% or less) or non-fat milk, including nutritionally equivalent milk alternatives as permitted by the school meal requirements (≤ 8 oz)
- Flavored milk and flavored milk substitutes shall have no more than 22 grams of sugar per 8 ounces
- 100% fruit or vegetable juices (≤ 4 ounces)
- No beverages other than juice, milk, milk substitutes, and water shall be sold or provided

Beverages – Proposal

Same type and portion across all grades:

- Plain water (carbonated or uncarbonated, with or without natural flavorings) (no size limit)
- Low-fat milk (1% or less), plain
- Non-fat milk, plain or flavored, including nutritionally equivalent milk alternatives as permitted by the school meal requirements
- 100% fruit or vegetable juices ($\leq 8\text{oz}$)
- 100% fruit and vegetable juice diluted with water or carbonated water ($\leq 8\text{oz}$)
- No beverages other than juice, milk, milk substitutes, and water, all as defined above, shall be sold or provided.

Artificial Sweeteners

- USDA: Guidance did not explicitly address non-nutritive sweeteners.
- MA: No food or beverage shall contain an artificial sweetener.

Proposal: Maintain MA standard.

Sugar-free Chewing Gum

- USDA: Sugar-free chewing gum is exempt from all of the competitive foods standards.
- MA: Because no food or beverage shall contain an artificial sweetener, sale of sugar-free chewing gum is prohibited.

Proposal: Maintain MA standard.

Timing

- USDA: Standards are in effect from midnight before to 30 minutes after the end of the official school day.
- MA: Standards are in effect from 30 minutes before to 30 minutes after the end of the official school day.

Proposal: Adopt USDA standard.

Summary

- Because Massachusetts does not meet the minimum standards in all categories, we have proposed revisions to those portions of the regulations to bring the Commonwealth into compliance with federal law.
- In some cases, Massachusetts has a more stringent policy and we recommend to continue with the higher standard, which has been in effect under existing state regulation since 2012.
- Additionally, the need to amend existing regulations provides the opportunity to assess the status of current implementation efforts in impacted schools and evaluate the benefits of aligning other categorical standards with federal regulations proactively.

Summary

- Improving access to healthy foods and beverages for students can positively impact growth and development and can cultivate life-long healthy eating behavior. Providing guidance to schools in the form of established nutrition standards for competitive foods and beverages sold or provided to students is an effective way to improve access to those healthy foods and beverages, and allows us to assure that what students have access to purchase in school is healthy.
- Massachusetts has been a pioneer, setting nutrient standards for competitive foods and beverages in schools long before federal standards were promulgated. The publication of the federal standards provides a unique opportunity for Massachusetts to obtain better access to federal training and implementation resources (through alignment with federal standards), while still maintaining the national status Massachusetts has achieved as a pioneer for student nutrition.

Next Steps

- Public Hearing will be held in September
- Additional time will be allowed for submission of written testimony
- Plan for guidance to go out to schools this month
 - Clarify their obligation is to the stricter standard until revised regulations are determined
- Staff will return to Public Health Council for final approval after review of all testimony